IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6593 of 1988
Date of decision: 26.11.2007

Kirpal Singh and others .....Petitioners

Versus

The Secretary to Government of Punjab, Transport Department, Chandigarh and others

.....Respondents

Coram: Hon'ble Mr. Justice M.M.Kumar

Present: Mr. Karan Singh, Advocate,
for the petitioner.
Mr. Amit Chaudhary, AAG, Punjab.
Mr. Harsh Aggarwal, Advocate,
for respondent No. 2.

M.M.Kumar, J.

This petition filed under Article 226 of the Constitution prays for issuance of direction to the respondent-Pepsu Road Transport Corporation, Patiala to consider the claim of the petitioners for promotion on the posts of Assistants without resorting to the mode of appointment by direct recruitment.

It is the admitted position that the petitioners were appointed as Clerks on 16.07.1971, 29.09.1971, 5.10.1971, 9.3.1972 and 1.10.1971 respectively. The claim of the petitioners is that at the time of their appointments, draft rules were applicable to their service conditions and only Clerks were eligible for promotion as Assistants whereas the respondent-Corporation has illegally promoted the Ticket Stock Verifier and Diesel Pump Attendant to the posts of Assistants ignoring the meritorious claim of the petitioners. It has also been claimed that the petitioners fufilled all the conditions and qualification prescribed for

promotion for the post of Assistant. In that regard reliance has been placed on the draft rules known as Draft Pepsu Road Transport Corporation (Conditions of Appointment and Service) Regulations, 1975 (P-2). The petitioners have relied upon the promotion order dated 26.02.1975 as well as the order dated 25.05.1979 (P-3 and P-4) to argue that only Clerks used to be promoted to the posts of Assistants whereas vide order dated 19.10.1979 (P-5) Cashier and Ticket Stock Verifier have been promoted, which is impermissible.

In the written statement filed on behalf of the respondents, the stand taken is that the writ petition suffered from delay and latches as the orders of promotion as Assistant made in favour of Ticket Stock Verifier and Diesel Pump Attendant were passed in the year 1979 and the writ petition was filed in the year 1988. The persons, who have been appointed by direct recruitment have also not been impleaded as party-respondents. The existence of draft rules, at the time when the petitioners were appointed, has been denied and it has been claimed that the seniority of all the categories of employees was maintained in accordance with the Pepsu Road Transport Corporation (Conditions of Appointment and Service Regulation), 1981. It has further been submitted that there were no statutory regulations prior to 1981 which have been framed under Section 45 of the Road Transport Corporation Act,1950 (for brevity 'the 1950 Act'). The respondents have also taken the stand that the cadres of Ticket Stock Verifier and Diesel Pump Attendant belong to Class-III Ministerial cadre and have been promoted as per their seniority. It has been asserted that the respondents has not promoted any person junior to the petitioners.

After hearing the learned counsel for the parties and perusing

the record, I am of the considered view that there is no merit in the instant petition. The Draft Regulation as extracted in Annexure P.2 clearly provides the classification of employees as Class II- Works Manager, Traffic Manager and Class III (i) Ministerial which includes Assistant, Store Keeper, Ticket Verifier and Diesel Pump Attendant. Regulation 4(1) of the Draft Rules reads as under:

" **Classification of employees:**

i) For the purpose of these regulations the employees shall be classified as under:

a) Class II- Works Manager, Traffic Manager,

b) Class III(i) Ministerial.

Office Superintendent, Resident Auditor, medical Officer, Accountant, Legal Advisor, Assistant, Accountant, Chief Store Keeper, Stenographer, Cashier, Store Purchase Asstt., Jr. Auditor, Assistant, Assistant Cashier, Ledger Keeper, Assistant Store Keeper, Ticket Stock Verifier, Stenotypist, Typist-Clerk, Punjabi Instructor, Dispenser, Diesel Pump Attendant."

The method of recruitment has been provided by Regulation 8 which postulates recruitment by direct, transfer/ deputation and by promotion. By Regulation 8(2) the appointing authority has been given the power to decide whether to fill the vacancy by direct recruitment or by transfer/deputation or by promotion. The quota of direct recruits for the post of Assistant has been prescribed to be 20 % and that of by promotion 80%. Regulation 8 as produced by the petitioner (Annexure P.1) reads as under:

"8. **METHOD OF RECRUITMENT;**

Recruitment to the posts shall be made:-

a)by direct recruitment, or

b)by transfer or deputation of an official already in the service of Government of India or State Government; or

c)by promotion.

2. When any vacancy occurs or is about to occur the appointing authority shall determine the manner in which such vacancy is to be filled in the ratio of appointment through direct .. promotion shall be as per details given below:

S.No.	Category of post	Percentage of ratio of appointment	
		Direct Rect.	By promotion
1.	Inspectors	60%	40%
2.	All other categories of employees.	20%	80%

Note: For the direct recruitment the employees of the PRTC eligible regardless of age limit, provided they fulfill basic qualification.

3. Appointments to any post by promotion will be governed by the rule of seniority cum merit in addition to his qualification and experience."

A conjoint reading of the afore-mentioned draft regulations would show that 20 % posts of Assistants are to be filled up by direct recruitment and 80 % by promotion and all other posts in the cadre of inspectors are to be filled up according to the percentage prescribed in Regulation 8(2).

Even otherwise Draft Rules are no rules. There is only one possibility of following the Draft Rules if Draft Rules are followed to

regulate the service conditions of employees of a particular department. Such a situation has to be proved by citing example of consistently following such rules in respect of its employees. No material has been placed on record nor any averment in that regard has been made in the petition that Draft Rules have been followed.

It is further pertinent to note that the statutory Regulation under Section 45 of 1950 Act have been framed in the year 1981. According to Regulation 7 qualification for appointment to various posts has been given in Appendix "A" which in turn prescribes the qualification and experience by direct recruitment and by promotion. For promotion to the post of Assistant it has been laid down that the incumbent must be matriculate or equivalent with three years experience of the post of Junior Scale Stenographer or five years experience on the post of Cashier/ Clerk/Diesel Pump Attendant/ Ticket Stock Verifier Clerk, Store Keeper etc. The statutory Regulation of 1981 appears to have replicated the draft regulations.

Moreover, the promotions of Ticket Stock Verifier Clerk, Diesel Pump Attendant and Store Keeper etc. was made in the year 1979 and the writ petition was filed in the year 1988. The writ petition suffers from delay and latches. Another lacuna in the writ petition is that those persons who have been appointed by direct recruitment have also not been impleaded as party respondents and no order setting aside their appointment could be passed at their back. It is significant to notice that the written statement in this case was filed in the year 1996 pointing out that no person junior to the petitioners has been considered for promotion and that petitioners would be considered for promotion as and when their turn

reaches as per the ratio of 20% and 80% between the direct and promotees. Therefore, there is no merit in the petition and the same is liable to be dismissed.

For the reasons stated above, this petition fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

November 26, 2007
pj/okg